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No. 93 2054

In The

Supreme Court of the United States

October Term, 1993

THOMAS L. BLACKBURN,

Petitioner,

vs.

REBECCA L. TUDOR,

Respondent.

Petition For A Writ Of Certiorari To The Supreme Court Of Ohio

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

I

Does the Order of the Supreme Court of Ohio, denying plaintiff-appellant's motion to certify the record to that Court deny plaintiff-petitioner due process of law, within the meaning of the Fourteenth Amendment to the U.S. Constitution?

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Petitioner, Thomas L. Blackburn, seeks review of an Order of the Supreme Court of Ohio, said order appearing to adopt the decision of the Court of Appeals for the Fourth Appellate District of Ohio, that Petitioner's Notice of Appeal was not timely filed. On motion for rehearing, the Ohio Supreme Court upheld its ruling.

OPINIONS BELOW

Petitioner filed a Notice of Appeal to the Court of Appeals for the Fourth Appellate District of Ohio, after he received notice from this Court that his Petition for Writ of Certiorari had been denied. As explained more

fully below, before the time expired for Petitioner to file his Motion to Certify the Record in the Ohio Supreme Court, the trial court entered a "Revised Judgment". On motion by defendant-appellee to dismiss, the Court of Appeals found that the Notice of Appeal was not timely filed, because the judgment sought to be appealed was more than thirty days old. Defendant's motion is reproduced in the Appendix hereof as Exhibit A; Plaintiff's response is reproduced as Exhibit B; the Decision and Judgment is reproduced as Exhibits C and D.

On November 29, 1993, Petitioner moved the Supreme Court of Ohio, to certify the record, by filing a Notice of Appeal, as required by law, in the appellate Court, see Appendix at Exhibit E. Petitioner timely submitted his Brief in Support of Jurisdiction with the Supreme Court of Ohio. See Appendix at Exhibit F. The motion was overruled. Appendix, at Exhibit G. Petitioner filed a motion for rehearing and that was also denied. See Appendix at Exhibit H. This petition followed.

STATEMENT OF THE CASE

Petitioner filed an action in the Scioto County Court of Common Pleas. The action came on for trial and judgment was rendered in favor of respondent. Petitioner appealed to the Court of Appeals for the Fourth Appellate District of Ohio, which rendered judgment on September 25, 1992, partially favoring petitioner.

On October 16, 1992, the trial judge entered a "Revised Judgment Entry", reinstating his original decision. Notwithstanding the trial court's new entry, petitioner timely perfected an appeal to the Supreme Court of Ohio, pursuant to its rules, seeking review of that portion of the appellate court's ruling that was not favorable to him. The appeal was by motion to certify the record and the Supreme Court of Ohio overruled the motion. On motion for rehearing, the denial was sustained.

On April 26, 1993, petitioner filed a Petition for a Writ of Certiorari with this Court. On June 14, 1993, this Court denied the petition. Petitioner then sought to appeal the October 16, 1992, trial court judgment, by filing a Notice of Appeal with the appellate court. Respondent filed a motion alleging that the notice was not timely filed, since the trial court had entered it more than thirty days before the notice was filed. Notwithstanding applicable law, the appellate court agreed and dismissed the case.

All motions were timely filed by Plaintiff, see filing dates listed as follows:

September 25, 1992 – Case No. 2021 – Decision and Judgment Entry of The Court of Appeals for the Fourth Appellate District of Ohio.

October 16, 1992 – Case No. 91-CI136 Revised Judgment Entry of the Court of Common Pleas, Scioto County, Ohio.

October 19, 1992 – Case No. 92-2606 – Plaintiff's Notice of Appeal to the Supreme Court of Ohio.

February 10, 1993 – Case No. 92-2606 – Supreme Court of Ohio overruled Appellant's Appeal.

February 26, 1993 – Case No. 92-2602 – Plaintiff filed a Rehearing En Banc to the Supreme Court of Ohio.

March 24, 1993 – Case No. 92-2606 – The Supreme Court of Ohio denied Rehearing En Banc.

April 26, 1993 – Case No. 92-1714 – Plaintiff filed Petition for a Writ of Certiorari with the Supreme Court of the United States.

June 14, 1993 – Case No. 92-1714 – Petition for a Writ of Certiorari denied by the Supreme Court of the United States.

June 21, 1993 – Case No. 93-CA2150 – Plaintiff's Notice of Appeal with the Court of Appeals for the Fourth Appellate District of Ohio.

REASONS TO GRANT THE PETITION FOR A WRIT

In effect, the Ohio Courts have denied petitioner due process of law. In its opinion and decision, the Court of Appeals for the Fourth Appellate District found that petitioner timely filed his Notice of Appeal, when it was filed within thirty days of this Court's denial of his petition. Under Ohio Law, ORC §2703.26, the time to begin counting the thirty days under Ohio Rules of Appellate Procedures Rule 4(A) does not begin until other appeals are concluded. In this case, the trial court prematurely entered its "Revised Judgment", meaning that the judgment did not take effect until after the appeal of the first judgment had been passed upon by this Court. Appellant

filed the Notice of Appeal within the allotted time period. See also ORC §2305.29.

The arguments set forth in the exhibits, appearing in the Appendix hereof are hereby incorporated by reference, as if they were fully set forth herein. Such a harsh result as visited petitions in denial of his right to appeal the "Revised Judgment" is a proper subject for review in this Court, pursuant to rule 10.1 (b) of the Rules of the Supreme Court or 28 USC 1257.

CONCLUSION

Petitioner prays that this Court will determine his rights with respect to due process, as regards the "Revised Judgment" and grant his appropriate relief.

Respectfully submitted,

THOMAS L. BLACKBURN, *Pro Se*